IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4847 of 1991

with

SPECIAL CIVIL APPLICATION No 353 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law
JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ
of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AYUB N BADI

Versus

GUJ STATE LAND DEVELOPMENT CORPORATION LTD

Appearance:

1. Special Civil Application No. 4847 of 1991

Ms. Krina C. Thakkar MR YOGESH S LAKHANI for Petitioners No. 1-3

R YOGESH S LAKHANI for Petitioners No. 1-3

R YOGESH S LAKHANI for Petitioners No. 1-3

R YOGESH S LAKHANI for Petitioners No. 1-3

R YOGESH S LAKHANI for Petitioners No. 1-3

R YOGESH S LAKHANI for Petitioners No. 1-3

R YOGESH S LAKHANI for Petitioners No. 1-3

R YOGESH S LAKHANI for Petitioners No. 1-3

R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners No. 1-3
R YOGESH S LAKHANI for Petitioners MR BA VAISHNAV for Respondents N
. 1,3

NOTICE NOT RECD BACK for Respondent No. 2

2. Special Civil Application No. 353 of 1987

Mr. K.S. Acharya & MR AK CLERK for Petitioner No. 1

Mr. B.A. Vaishnav for Respondents.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/03/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Krina C. Thakkar, Mr. A.K. Clerk and Mr. K.S. Acharya for the petitioners in these two petitions and Mr. Biren A. Vaishnav for the respondent Corporation in these two petitions. In special civil application no. 4847 of 1991, rule was issued by this Court on 26th July, 1991 and it was ordered to be heard with special civil application no. 353 of 1987 and ad.interim relief granted earlier was modified by issuing direction that the respondents shall not terminate the services of the petitioners except in accordance with law by order dated 3rd October, 1991. Similarly, in special civil application no. 353 of 1987 also, rule has been issued by this court on 3.4.1987 and interim relief was granted on 12th February, 1987 and it was directed that the services of the members of the petitioner union shall not be terminated except in accordance with law.

Brief facts of special civil application no. 4847 of 1991 are to the effect that the petitioners joined the services with the respondents with effect from

14.12.1981, 1.6.1982 and 24.6.1983 respectively as a contingent peons since their date of joining without any break in service and they are being paid very meagre amount as they are continued as contingent peons and have to work for four hours in a day as contingent peons. Since the date of their joining the service, there was no any break in their service and their services have also never terminated in between till this date. The respondents are paying fixed salary to the petitioners. No other allowance or benefit is being paid to the petitioners and at one point of time, request was made by one of the petitioner for food grain allowance and such application for food grain allowance has been rejected by the authority of the respondents as per page 26 and 28 of the petition. The petitioners are receiving lumsum amount of fixed salary of Rs.1000.00 and they are continued as such since last more than 20 years or so and are receiving fixed salary without any other benefits attached to the work which has been carried out by the petitioners. The nature of work which has been performed by the petitioner is permanent and vacancies are available but the respondent is not regularizing the services of the petitioner and, therefore, the petitioners have filed the present petitions before this court.

Special Civil Application No. 353 of 1987 has been filed by the union representing 103 employees who are working as part time contingent paid employees and have to work four hours in a day as per annexure "A" which is attached to the petition at page 22 wherein date of joining of each of the members of the petitioner union have been given. Almost all the employees have been appointed from 1980 to 1984 and some were appointed even in the year 1976-77. The petitioners have continued to work as such without any break since the date of their joining and since their services have not been regularized by the respondents though vacancies are available, they have filed the said petition before this Court.

In both the petitions, the respondent corporation has filed affidavit in reply wherein the respondent corporation has contended that the petitioners are the contingent paid employees and their services are required only for a period of four hours in a day; the petitioners are required to clean the concerned local office in the morning and to fill in the drinking water pot; that the Government has fixed the wages for contingency paid employees depending on the number of hours for which they are required to work; that there is no permanent

employees under the respondent corporation who are required to render their services only for four hours in a day. The deponent of the said affidavit in reply has contended that the permanent employees under the respondent corporation such as those holding the post of peons are required to render their services on full time basis and not on part time basis. Therefore, the claim of the petitioner for salaries in the regular pay scale cannot be accepted. It has been denied that the petitioners are doing the identical or same work which is being done by the permanent employees of the respondent corporation. It has also been submitted that the claim of the petitioner for permanent status is not tenable. The petitioners are not regularly recruited employees. It has been contended that the respondent No.1 Corporation has framed Recruitment Rules for various rules for various posts under the respondent no.1. The petitioners are not appointed as per rule 12(1) of the Recruitment Rules. The petitioners are not appointed on any regular posts of peons. The petitioners were not employed pursuant to any public advertisement or through the employment exchange but have been employed as mere daily wager peons in the subordinate offices of the respondent corporation in view of the local requirements at the relevant time. The petitioners have no right to claim the status of permanent employees or any permanency benefits as alleged. It has also been contended that the corporation makes recruitment to the post of peons after calling names, the corporation calls for interview those contingency paid employees who have completed five years of service. The deponent of the affidavit in reply has contended that the petitioners were called for interview in November, 1990 but were not selected. It has been contended that there is no any arbitrary or discriminatory treatment is meted out to the members of the petitioner union. It has been denied that the persons junior to the petitioners are made permanent as alleged. It has been clarified that those who were selected for the posts of peons at the time of regular selection procedure were appointed as peons and since the petitioners were not selected, were not appointed on the posts of peons. It has also been contended that the petitioners are being paid wages in accordance with the Government circular at Annexure "I" and therefore, the petitioners are not entitled to any reliefs as claimed by the petitioners. It has been reiterated that at the regular selection procedure, contingency paid employees having completed five years of service were called. Those who were selected were appointed as peons in April, 1991 and since the petitioners were not selected, were not appointed and, therefore, it has been submitted that

there is no question of discrimination or injustice as alleged. It has also been denied that the respondents have adopted unfair labour practice. It has been submitted that the petitioners are not regular permanent employees nor are they doing the work being done by the regular permanent employees. It has been submitted that the petitioners are contingency paid daily wager employees and are required to render only for four hours in a day for dusting the office, filling in the water pot etc. and are not doing the work which is being done by the permanent regular employees working on full time basis. It has been submitted that there is no question of equal pay for equal work as the petitioners are not doing the identical or similar work which is being done by the permanent employees of the respondent corporation. It has also been denied that any corrupt practice has emerged by employing the petitioners on contingency basis. It has also been denied by the respondent corporation that the services of the petitioners will be terminated as alleged in para 10 of the petition. After raising such contentions and also after reiterating the same, the respondent No.1 has submitted that the petitioner are not entitled to any reliefs in these two petitions and, therefore, these petitions are required to be rejected.

During the course of hearing of these petitions, learned advocate Ms. Krina Thakkar has relied upon the following authorities in support of her contentions.

(1) 2002 - 1 - CLR page 550 in case of Amarsinh Madhavji Chauhan versus State of Gujarat.
(2) AIR 1996 SC 2898 in case of Chief Conservator of Forests and another etc. v. Jagannath Maruti Konthare etc.
(3) AIR 1998 SC 1477 in case of Arun Kumar and others v. State of Bihar and others.
(4) AIR 2000 SC 3287 in case of Hindustan Machine Tools versus M. Ranga Reddy
(5) AIR 2001 SC 706 in case of Gujarat Agricultural University versus Rathod Labhu Bechar.

Relying upon the aforesaid decisions, she has submitted that the respondent corporation is taking work from these part time employees for more than twenty years continuously but is not paying regular salary to such employees. According to her, it amounts to unfair labour practice on the part of the respondent Corporation which is an authority of the State. She has also submitted that the employees were appointed as part time

contingency paid employees and the recruitment procedure has not been followed and the names were not sponsored by the employment exchange but the fact remains that the appointments as such were given by the respondent Corporation and, therefore, it cannot be said that there is any back door entry as alleged. According to her, therefore, the contention of back door raised by the respondents is required to be rejected. She has also submitted that such employees who were appointed as part time employees since more than twenty years have to maintain their families and their responsibilities towards their families are being increased but their wages are the same which they were being paid at the time of their entry. She has submitted that according to the reply filed by the respondents, in November, 1990, procedure of selection was carried out by the respondents and, thereafter, no such selection procedure has been held by the respondents after November, 1990 for absorption of such part time employees by way of regular selection. She has submitted that such inaction on the apart of the respondent corporation in not initiating such procedure regularly for regularizing the services of such part time contingency paid employees has deprived such employees from their legitimate rights of being regularized in accordance with the rules and procedure prescribed by the respondents. She has submitted that the work which is being done by the petitioners is permanent in nature and, therefore, the petitioners are entitled for regularization of their service and are entitled to get status of permanent regular employees. She has further submitted that it is not the case of the respondent as per their affidavit in reply that there is no vacancy available in the respondent corporation.She has submitted that the work which is being carried out by the petitioner is that of sweeper and there is no criteria as to what should be the criteria as regards experience or qualification has not been clarified in the affidavit in reply. She has also submitted that alongwith the affidavit in reply, the respondent corporation has produced list at page 42 which is containing the particulars of the contingency peons who were called for interview in November, 1990. Whether the employee has been selected or not could be gathered from col.4 of the said particulars at page 42 wherein answers have been given either in "YES" or "NO" against their respective claim. She has submitted that if the said list is minutely examined, then, it would definitely appear that the persons junior to the petitioners in these petitions and also the members of the petitioner union in these matters have been made permanent by process of selection whereas the petitioners, though are

senior to such persons, have not b been regularized and absorbed and, therefore, the action of the respondents in not regularizing the petitioners while regularizing such other employees who are junior to the petitioners is arbitrary and violative of Article 14. She has further submitted that thus, on one hand, the petitioners have been deprived of their status of permanent employees by not selecting them in the selection procedure held in November, 1990 and on the other hand, after November, 1990, till this date, no such procedure has again been held by the respondent for regularizing such employees. This has also deprived the petitioners of their right to claim regularization and absorption in accordance with the procedure prescribed under the rules. She has also submitted that the approach, attitude and inaction on the part of the respondent authorities in not regularizing the services of the petitioners and members of the petitioner union is illegal, unjust, unfair and violative of Article 14 and 21 of the Constitution of India and is required to be deprecated by this Court.

On the other hand, learned advocate Mr. Vaishnav appearing for the respondent corporation in these two petitions has submitted that the petitioners are not legally entitled to claim absorption in the respondent corporation as a matter of right unless they clear the recruitment procedure prescribed by the corporation under rule 12 of the Rules for recruitment. According to him, the petitioners were appointed as such without following any procedure and, therefore, on the basis of such back door entry, they cannot claim any such right as has been prayed by the petitioners in these petitions. He has further submitted that the work which is required to be performed by the petitioners is about four hours in a day and no full time work is available with the respondents and, therefore, the petitioners are not entitled for regularization or absorption as alleged and grant of such relief would financially affect the respondent corporation. He has also submitted that the persons who were found fit in the selection process held in November, 1990 have been made permanent by the respondents. He admits that, no doubt, some of such persons are junior to the petitioners who have been made permanent during the said selection process. He has not been able to answer whether any such process has thereafter been undertaken by the respondent corporation for regularizing and absorbing such employees after November, 1990 in accordance with the Circular at Annexure I. He has relied upon the following decisions and has submitted that in the facts and circumstances of the case and also in view of the principles laid down by the apex court and

this Court in the following decisions, the petitioners herein are not entitled to any reliefs as prayed for by them.

(1) 1998 (3) GLR page 2264 in case of D.D. Upadhyaya and others versus State of Gujarat and others.
(2) [1992] 1 SCC 489 in case of State of Punjab and others versus Surinder Kumar and others.
(3) JT 1994 (5) SC 378 in case of Dr. Arundhati Ajit Paragaonkar v. State of Maharashtra & Anr.
(4) 1992 (1) GLR page 608 in case of Dinesh Shivubha Parmar versus State of Gujarat and others.

Relying upon the aforesaid decisions, he has submitted that the petitioners are not having any legal right to claim absorption as a permanent employees in the respondent corporation and the respondent corporation is not duty bound to consider their case for absorption and, therefore, present petitions under Article 226 of the Constitution of India are required to be dismissed.

I have considered the submissions made by the learned advocates for the respective parties. It is required to be noted that each of the petitioners herein and each of the member of the petitioner union herein has been appointed by the respondent corporation after verifying the particulars as regards their names, age, qualification and experience etc. for the work in question. These all are class IV employees working as sweeper to clean the office, filling drinking water in the pot and such other miscellaneous work which is required to be performed by each of the petitioners herein four hours in a day. It is also not in dispute that since last about twenty years or so, the petitioners are working as contingency paid employees on part time basis for four hours in a day. It is also clear that the rules are prescribing for procedure for absorbing and giving them status of regular employee in time scale and in November, 1990, such task was undertaken by the respondent corporation wherein some of such employees were regularized but thereafter, no such exercise has been undertaken by the respondent corporation and, that is why, the petitioners herein are at the same square where they were after these much years of their service. It is also clear that the work which the petitioners are performing since last about twenty years is of a permanent nature. The only difficulty is that they are being considered as part time contingency paid employees without any benefits to such employees. The respondent corporation which is a "State" or "the other instrumentality of the State" within the meaning of

Article 12 of the Constitution of India has acted in a manner to take work from each petitioner as a part time contingency paid employees for four hours in a day in a fixed salary without any other benefits. There is no any policy in the respondent corporation to make them permanent after completing service of these much years. Rules have been framed in this regard and after November, 1990, the respondents have not followed such procedure for regularizing their services. IN the selection process held in November, 1990, about 36 of such employees were made permanent as per the procedure prescribed under the rules as per the list at page 42 produced by the respondent corporation. Even in that process also, some of the persons junior to the petitioners have been regularized but the petitioners have not been regularized. The respondent corporation has not been able to submit before this Court as to what was the criteria for selection of such employees while making them permanent. It is also necessary to be noted that there is no averment in the petition that during the tenure of about twenty years, whether there is any complaint as regards work of any of the petitioners herein or not. If there is no complaint as regards their work, then, their case is required to be considered for regularization after having rendered the service of about twenty years as part time employees. While considering their case for regular appointment as a regular employee, such experience earned by the petitioners herein is enough to justify their regular appointment on the post in question. However, the respondents have not regularized their services and, therefore, considering this aspect, that if one employee who has been appointed as part time employee, if he has to remain as such for an indefinite period, then, his life also would become part time but he has to live in a full time; he has to maintain the family and after number of years, his responsibility towards his family would be increasing and in such circumstances, with the small amount of Rs.1,000.00, such an employee would not be able to satisfy the basic requirements of the family. This aspect has been considered by various courts in respect of the similar situation that if the service of such an employee has continued since long period, then, his services must be regularized and for that, there must be some rules, procedure and exercise to be undertaken in accordance with such rules and procedure. This aspect has been considered by the apex court as well as this court in number of cases. Before considering the decisions of the apex court in the subject matter, it is necessary to note some of the observations made by the apex court in recent decision in case of M.S. Garewal

and another versus Deep Chand Sood and others reported in (2001) 8 SCC 151. In para 27 and 28 of the said decision, the apex court has observed as under:

"27. The decision of this Court in D.K. Basu versus State of W.B. comes next. This decision has opened up a new vista in the jurisprudence of the country. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits stands extended since Anand,J. (as His Lordship then was) in no uncertain terms observfed; (SCC p. 439 para 45)

'The Courts have the obligations to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the o ffender cannot give much solace to the family of the victim civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to the life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim,who may have been the breadwinner of the family.'

28. Currently, judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affection of the people has been taken note of rather seriously and the judicialconcern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse tothe old conservative doctrine of the civil court's obligation to award damages. As a matter of fact, the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the countrybut the learned Judge with his usual felicity of expression firmly established the current trend of justice oriented approach. Law courts will lose their efficacy if they cannot possibly respond to theneed of the society technicalities there might be many but the justice oriented

approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In case of Tandon Brothers versus State of W.B. and Others reported in (2001) 5 SCC page 664, the apex court has observed as under in the middle of para 34 of the judgment :

"... Governmental action must be based on utmost good faith, belief and ought to be supported with reason on the basis of the state of law - if the action is otherwise or runs counter to the same, the action cannot but be ascribed to be mala fide and it would be a plain exercise of judicial power to countenance such action and set the same aside for the purpose of equity, good conscience and justice. Justice of the situation demands action clothed with bona fide reason and necessities of the situation in accordance with the law. But if the same runs counter, law courts would not be in a position to countenance the same."

In this regard, there are certain decisions of the apex court as well as this Court, as under :

In case of V.M. Chandra versus Union of India and others, 1999 AIR SCW 1234, the matter was relating to absorption in service. The appellant before the apex court was engaged by the Railways as Technical Mate on casual basis. He was continued in service for years. His claim for absorption in Group C was rejected by the Railway Board on view that there is no post of Technical Mate. The apex court observed that the communication of the railway board itself is indicating the manner in which Technical Mate is to be absorbed. Therefore, considering the long period of service the appellant had put in and qualification possessed by the appellant, the appellant was held to be entitled to be absorbed. Rejection of the claim of the appellant by the Railway Board was held to be erroneous. Ultimately, considering the number of occasions the appellant had approached the tribunal and the authorities for relief, the apex court directed the respondents in the said matter to absorb the appellant as a Skilled Artisan in Grade III.

In case of GSRTC, Rajkot versus Workmen of ST Corporation, Rajkot Division, reported in 1999 (4) GCD 3444 (Gujarat), this Court has observed as under in para 8 of the judgment :

"8. In the case of persons, who had already entered the service and have continued there for long for one reason or another, for some reason beyond their control and their claim to permanency can be considered in the light of statutory provisions made for the benefit of weaker section of society to combat against existing inequalities and to curb tendencies of exploitation and there is no question about constitutional validity of such provisions, the question has to be examined in that light. Neither there can be an automatic claim to regularization nor an automatic rejection to such claim. When a dispute is raised under the Industrial Disputes Act about terms and conditions of service, on the ground of remedying the evil of continued employment on casual or temporary basis not providing job security as well as results in payment of wages to such temporary hands much less than what is paid to regular or permanent hands, the question invites to be examined in the light of statutory provisions aimed to curb unfair labour practice and to provide a fair deal to such workmen in consonance with constitutional guarantees of equality and right to life, which include right to livelihood with dignity. To curb the tendency of unfair conditions of labour, to cut across the unreasonableness inherent in long continuance as temporary employee not withstanding existence of permanent work resulting in discriminatory treatment in the matter of providing terms of condition for discharging permanent nature of work of the same kind between regular employees and those recruited as temporary ad hoc or casual the Courts intervened to enthuse a vibrant life to the meaning of right to life and personal liberty by alleviating from mere right to survival or animal existence to be right to life be composed of all aspects which makes a man's life meaningful and worth living by giving expansive meaning to Arts. 14 and 21."

In para 24 and 25 of the said decision, it has been held by this Court as under :

"24. As has been stated by the Supreme Court in the aforesaid decisions whether persons are shown to have been employed temporarily for long duration and it has also been shown that there

exists permanent nature of work, to employ number of persons in that event, the irrestible conclusion is that continued temporary employment in respect of some of them on the jejune ground of non availability of vacancy is nothing but an unfair labour practice to deny the payment in the regular pay scales as are available to permanent employees to get the same work done on payment of minimum wages or lesser wages permissible to daily rated workmen for casual type or temporary type of work. Once this conclusion is reached, on the findings recorded by the Tribunal about which nothing has been said, namely that there exists permanent nature of work for five members at least and since July, 1996 only one person has been employed on permanent basis and that these person are discharging functions of wireman or helper wireman with effect from the date referred to above in the case of each workmen, no justification can be found to interfere with the order of regularization granting permanent status to these workmen with effect from 1.1.1996, when they have been found to be qualified to hold such positions otherwise also. The case clearly falls within the ratio laid down by the Supreme Court in Pyara Singh case (supra) as well as Chief Conservator of Forests (supra). In this connection, reference may usefully be made to observations of Das Gupta, J. in Jaswal Sugar Mills Ltd. vs. Badri Prasad, 1961 (1) LLJ 649 (AIR 1967 SC 515) underlying the important requirement of job security of a workmen;

'The distinction between a permanent engagement of a work of a permanent nature and a temporary workman engaged on work of a permanent nature is that a temporary workman is engaged to fill in a need of temporary hands for extra hands of permanent jobs..... When a workman is engaged in a work of permanent nature which lasts throughout the year, it is expected that he would continue permanently unless he has been engaged to fill in a temporary need.'

25. On the same principle awards of industrial tribunals directing the employer to make temporary workman permanent nature of work throughout, were upheld by the Apex Court in Management of Sone Valley Portland Cement CO.

Ltd. vs. Their WOrkmen & Others AIR 1963 SC 495. Referring to award directing the workmen engaged temporarily for packing work to be made permanent, the Court said;

'Turning now to the three points which have been raised before us, we shall first take the contention with respect to that part of the award by which the tribunal has ordered that 50 per cent of the cement packers should be made permanent.The reasons given by the tribunal for making this order are (i) that cement packing is not work of a permanent nature but is part of the manufacturing process which goes on all the time, and (ii) that the figures supplied by the appellant as to the number of temporary cement packers and the work done by them in 1954 show that there was sufficient work for at least 50 per centum of them being made permanent. We agree with both the reasons given by the Tribunal and are of the opinion that the order passed by it that 50 per centum of the cement packers should be made permanent is justified. We, therefore, rejected the contention of the appellant in this behalf. "

In case of Engineering Mazdoor Sangh versus Oil and Natural Gas Corporation Ltd. reported in 1999 (2) GLH 468, this Court has considered the question of regularization. Head note (A) of the said decision as reported in 1999 (2) GLH 468 reads as under:

(A) Industrial Disputes Act, 1947 - Is. 10 Standing Order NO. 2 (ii) - Once a workman acquired status of temporary workman on completion of 180 days of attendance in any period of 12 consecutive months, he becomes entitled to be considered for conversion as a regular employee after putting in 240 days of attendance in any period of 12 consecutive months - Putting 240 days of attendance in any period of 12 consecutive months is a condition precedent Requirement of minimum qualifications prescribed by commission - Twin requirement to claim consideration for conversion as regular employee."

In case of Wajid Ali and The Superintending Engineer and others reported in 1997 (77) FLR page 805, the Allahabad High Court has observed that since the petitioner has completed more than 240 days service in 12 consecutive calendar months, his services shall be regularized.

In case of District Collector/Chairman and others versus T. Devendrapal Singh and others, reported in 1998 AIR SCW 4122, the apex court has observed as under :

"We have heard the learned counsel for the parties. These matters relate to regularization and payment of wages to the respondents who were employed on daily wage basis. Bty the impugned judgment the Division Bench of the High Court, while affirming with the modification the order passed by the learned single Judge has directed that all employees who have completed five years of continuous service should be considered for regularization in accordance with the terms of G.O.Ms. No. 212 dated April 22, 1994 and that they should be paid their wages at par with the wages paid to the permanent employees of that category. As regards payment of wages there is no dispute between the parties that the same have to be paid from the date of regularization. In so far as regularization is concerned, we are of the view that the High Court has rightly directed that on the basis of the Notification GO Ms No. 212, the respondent employees shall be regularized with effect from the date or dates, they completed five years' continuous service. It is therefore made clear that the other conditions laid down in the said GO Ms No 212 will have to be satisfied for the purpose of regularization. The special leave petitions are disposed of accordingly. No costs. "

In case of ANZ Grindlays Bank Ltd. v. ANZ Grindlays Bank Employees Union & Anr. reported in 1998 II CLR 192, the award of the tribunal granting regularization to 27 workmen was confirmed by the learned Single Judge. In appeal, as regards the submission that there was no evidence that 27 workmen had worked for 240 days in a year, it has been held by the Court that the tribunal has recorded a finding that the concerned workmen had worked for 240 days and that rightly an adverse inference was drawn as the appellant did not produce register of employees and the appeal was dismissed.

In case of Arun Kumar Raut and others v. State of Bihar and others reported in 1998 AIR SCW 332, the apex court has observed as under :

"Heard learned counsel for the parties. This appeal is directed against the order dated 23.9.1994 passed by the Patna High Court in CWJC No. 13043 of 1993. The writ petition filed by the appellants 20 in number claiming regularization in the Health Department of the Government of Bihar was dismissed by the impugned judgment. All the said 20 appellants were appointed on 1st of January, 1980 by the Civil Surgeon, Damka in Class III and IV posts as daily wager. On 30th March, 1989, the appointments of the appellants were regularized on the recommendation of the Appointing Committee. On 25.8.1993, the District Level Establishment Committee issued show cause notices to the appellants asking them to show cause why their appointments should not be cancelled in view of the fact that they got irregular appointments. Ultimately, on 14.10.93, the services of the appellants were terminated. It has been found as a matter of fact that at the time of initial appointment, no advertisement had been given and the names of these appellants were also not sponsored by the Employment Exchange. There is, however, no dispute that they are not lacking in requisite qualifications for appointment to the respective posts in Class III or Class IV. There is also nothing on record to suggest that in obtaining the said appointments, the appellants were guilty of any fraud or privy to any irregularity. Although in the matter of getting appointment in the Government service, the procedure required to be followed for such appointments cannot be by passed and if the initial appointment was illegal on account of not following due procedure cannot claim as a matter of right to be regularized. This Court, however, has looked with sympathy when question of regularization came for consideration in cases of temporary or ad hoc appointments, even made improperly, if the incumbents had been allowed to continue for a long time because of the human problem involved in such continued service. In the instant case, all the appellants after getting appointments continued for more than five years and it also appears from the records of the

case that they got salary initially for a few months and thereafter continued in service without getting any salary whatsoever from 1989 upto some period of 1992. Thereafter, the salary had been paid to them until the services were terminated. It may be stated that there is nothing on record to suggest that the service rendered by the appellants was otherwise unsatisfactory. It may also be stated that such salaries had been paid to these appellants after a departmental inquiry indicating that even though there were irregularities in the appointment but the appellants has requisite qualifications for the respective post to which they were appointed. Although the appellants had not been appointed by following the due procedure and, therefore, they cannot claim regularization as a matter of course but considering the fact that they had satisfactorily served the department even without getting any salary for along time and they were not guilty of any fraud or sharp practice and also did not lack in requisite qualification and they had been appointed against sanctioned posts, we feel that the appellants deserve sympathetic consideration in getting appointment against such sanctioned posts on humane consideration. Considering the special facts of this appeal it appears to us that it will be just, proper and consistent with the ends of justice to direct that 50 per cent of the sanctioned posts which were held by these appellants should be filled from amongst the appellants on the basis of their inter se merit position by taking into account their academic qualifications by waiving question of age bar, if any and usual procedure for such appointment. The remaining 50% of the said sanctioned posts will be filled up on regular basis by showing it open to the members of the public and following the procedure prescribed for such appointment in the State of Bihar. The remaining appellants who will not be absorbed against 50% of the said sanctioned posts will be entitled to compete for appointment in the balance 50% posts alongwith other eligible candidates but they will not be treated unsuitable on account of age bar. On the contrary, in the matter of assessment of merit they will be given a credit of 25% marks for the experience they have gained for services rendered by them for the said long period of 5 years or more. These directions are given on

consideration of the special facts of this case and this order being confined to the special facts of this case is not to be treated as a precedent. The appeal is accordingly disposed of without any order as to costs. We reasonably expect that the concerned authorities will make the exercise as early as practicable for filling up the vacant sanctioned posts, preferably within a period of six months from today."

In case of Rajesh Kumar Soni and Others versus Ministry of Environment and Forest and Wild Life and Others, reported in 1992 Supreme Court Cases (L & Is) 823, the apex court has observed as under while considering the question of regularization of the petitioners who were employed as daily rated workers on half of the wages of the regular employees continuing for more than four to five years in service.

"Heard learned counsel for the parties. We have also perused the writ petition and two counter affidavits. It is not disputed that the petitioners have been working in the establishment for more than 4 to 5 years. This gives us the impression that there is regular need for the employment. Though this is the position, petitioners are being continuing as daily rated employees. We do not think this should be permitted particularly when the wage of daily rated employees is about half of regular employees. We direct the opposite party respondent to absorb the petitioners on regular basis. If there be any other similarly situated employees senior to them, they should be given the same benefit. This should be done within three months hence. Initially, the absorption should be against Group D Posts and as and when permanent opportunity against group C posts opens up, they should be considered. The writ petition si disposed of accordingly with no order as to costs. "

The apex court has considered the question of regularization of casual labour working in different departments of the Government Company for almost 10 years continuously who were discharging duties similar to those of regular employees of the Company and has observed as under in case of Hindustan Machine Tools and others versus M. Rangareddy and others reported in AIR 2000 SC 3287, in para 8 of the judgment:

" Where casual workers who were rendering services similar to regular employees employees to Government company for over a decade on daily wage basis had filed petition for regularization of their services, directions issued by the High Court to the Government Company to frame a Scheme for regularization of services of the casual labours does not warrant interference. However, considering the submissions that the company is under financial constraints and has decided to reduce its work force, Court clarified that while framing the scheme, it would be open to the Company and the officers concerned to assess the requirement of regular work force in its different units, particularly the units in which the casual workers have been engaged over long periods and also the necessity for alleviation of the suffering to which the casual workers have been subjected to during all these years and fix the strength of work force so that the workers concerned are able to get the benefit of regular service within a reasonable time. The absorption of the casual workers in regular service will be subject to fulfilment of the conditions of eligibility qualification with relaxation of the age prescribed under the rules. "

Recently, in case of Amarsinh Madhavji Chauhan versus State of Gujarat reported in [2002(92) FLR 919], this Court has considered the question of regularization of the petitioner appointed on daily wages as watchman from July, 1974, continued in service upto 2001 and has held that the petitioner is entitled to be regularized and to get regular pay scale. In para 4, 5 and 6 of the report, this Court has observed as under:

4. I have considered the submissions of the learned advocates on behalf of the respective parties. Perusal of the material on record reveals that the petitioner who was appointed on 1st July, 1974 as daily wager at the rate of Rs.4/- per day and he remained in service upto 31st August, 1984. Thereafter, the services of the petitioner came to be terminated and said action which was challenged by the petitioner and ultimately, he succeeded before the Civil Court and even before the appellate forum and consequentially, the petitioner continued in services. These are undisputed facts which are on record. In light of these facts, when the

petitioner is not receiving regular salary for the post of Watchman who is working since the year 1974 and he remained continued in service at the rate of Rs.4/- per day, which in clear terms, amounts to clear exploitation of the petitioner by the public authority. It is also pertinent to note that this petition is pending before this Court for more than 9 years, despite this also, the case of the petitioner has not been considered by the respondent authority for absorption of the petitioner or paying him regular salary to the petitioner. In above background of the facts, certain observations made by the Apex Court in case of CHIEF CONSERVATOR OF FOREST AND ANOTHER VS. JAGANNATH MARUTI Kondhare reported in AIR 1996 SC 2898 are relevant with the facts of the case and therefore, observations made in para-12, 22 and 23, 28 and 29 are quoted as under :-

"12. We may not go by the labels, Let us reach the hub. And the same is that the dichotomy of sovereign and non-soverign functions does not really exist, it would all depend on the nature of power and manner of its exercise, as observed in para 23 of NAGENDRA RAO'S CASE [1994 Air SCW 3753]. As per the decision in this case, one of the tests to determine whether the executive function is sovereign in nature is to find out whether the State is answerable for such action in Courts of law. It was stated by Sahai, J. that acts like defence of the country, raising armed forces and maintaining it, making peace or war, foreign, affairs, power to acquire and retain territory, are functions which are indicative or external sovereignty and are political in nature. They are, therefore, not amenable to the jurisdiction of ordinary civil court inasmuch as the State if immune from being used in such matters. But then, according to this decision the immunity ends there. It was then observed that in a welfare State, functions of the State are not only the defence of the country or administration of justice or maintaining law and order but extends to regulating and controlling

the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. Because of this the demarcating line between sovereign and non sovereign powers has largely disappeared.

22. We have given out due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune [and 15 to Industrial Court, Ahmednagar] had been kept as casuals for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on increase because of increase in pollution. Permanency is thus writ large projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants.

23. The final point which needs our

determination is regarding the reliefs granted by the Industrial Court, which is to make the workmen, in both the matters, permanent with all benefits of a permanent worker, which would include payment of wages etc. at the rate meant for a permanent worker.

28. In so far as the financial string on State exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forest Department itself the casual employees are about 1.4 lacs and if all of them were to be regularized and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighborhood of Rs.300 crores a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first nor frightened by the second inasmuch as we do not intend that the view to be taken by us in these applies should apply, proprio vigore, to all causal labourers of the Forests Department or any other Department of the Government.

29. We wish to say further that if Shri Bhandare's submission is taken to its logical end, the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State, to exploit unemployed persons. To be fair to Shri Bhandare it may, however, be stated that the learned counsel did not extend his submission this far, but we find it difficult, to limit the submission of Shri Bhandare to payment of, say fair, wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State

Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondents workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularization to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief made available to the respondents is not one which would be available ipso facto to all the casual employees either of the Forests Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on merits of their own cases.

5. Similarly, view taken by this Court in case of C.D. CHAUHAN & ORS. V RESERVE BANK OF INDIA AND ANOTHER reported in 32 [2] GLR pg 1192, wherein relevant Head Notes portion of para 4,5 and 7 are quoted as under :-

"In case of the petitioners it is stated that their names are sponsored by employment exchange, Ahmedabad. Their names were sent on the requisition of the Reserve Bank of India for the posts of Mazdoors which belong to Cl.IV in the service of the Bank. Persons desirous of being employed were required to submit their application in the prescribed application form and such application for inter alia required details regarding age, educational qualifications, previous experience etc. pursuant to such applications candidates were called for personal interview and based on their age, educational qualifications and performance at the personal interview they were selected for being wait listed for the post of Tikka Mazdoors and after their selection they were called upon to undergo medical fitness examination, and after they have been found medically fit they were wait listed in the waiting list of daily wage mazdoors. [para-4]

The question that arises is as to how

daily wage [tikka] Mazdoors are differently or adversely situated, vis-a-vis, regularly employed Mazdoors of the respondent - Bank. Is mode of their recruitment different ? Are qualifications prescribed for the post different ? Are daily wage Mazdoors in any way ineligible or disqualified for being absorbed as regular mazdoors ? Are they rejected by any selection committee in the process of selection ? These few questions require to be answered, and the very mode of recruitment [stated in paragraph 4] makes it clear that the answer to all the questions is in the negative. The daily wage [tikka] mazdoors should possess the minimum educational qualification, namely Standard IV to VII passed and the petitioners when they applied for the post of daily wage [tikka] mazdoors did possess that qualification. The educational qualification for the post of regular mazdoor is not stated to be different. On the date of their application or their initial recruitment they were not over aged. They are not in any manner found to be ineligible inasmuch as the selection committee has selected them. In fact they have been wait listed and they have been continuously offered work on daily wage basis since 1984 till the date they filed the petition. Even after filing of this petition they have been offered work on daily wage basis as tikka mazdoors. [para-5]

There is no justification for denying regular appointment to the petitioners for the post of regular mazdoors. When the petitioners and other identically situated persons were enlisted to work as daily wage mazdoors after undergoing due selection process there was no justification in denying to them the post of regular mazdoors. When the Reserve Bank tried to fill in the posts of regular mazdoors in its regular establishment by giving fresh advertisement and by preparing list of

120 persons in total disregard of the claims of the petitioners for such posts, petitioners knocked the doors of this Court for justice." [para-7]

6. Recently, the Apex Court has also considered this aspect of regularization in service and also as regular pay scale to such daily wager employees in case of GUJARAT AGRICULTURAL UNIVERSITY V. RATHOD LABHU BECHAR reported in AIR 2001 SC 706. Relevant observations made in para-18, 19 and 30 are quoted as under :-

"18. What emerges is, all the respondent workmen are eligible for absorption on the facts of this case subject to any eligible qualification under the rule if any. Though no recruitment rules were filed in the proceedings either before the Tribunal or in the High Court but while proposing the scheme a copy of the recruitment rules for various cadres have been placed before us on behalf of the appellant University. This gives in column No.1 the serial No., in Column No.2 the name of the post, in column No.3 the pay scale, in column No.4 the age limit and in column NO.5 the qualification, serial No.10 deals with Peon and Class IV servants, serial No.13 deals with Operator-cum Mechanic, Serial No.14 deals with Chowkidar, Serial No.25 deals with Plumber and Serial No.33 deals with Carpenter. This shows that recruitment rules did have these post in its ambit about which we are concerned, yet no posts were created. This proposed creation of post is churned out only after this long battle by the workmen as against the appellant. It was not expected from the institutions like the present appellant, especially when it si fully funded by the State Government that this process of absorption should have taken such a long time and to have yielded to it only after this long battle. This legal position is well known not only to the appellant but the

State who is funding it, then why to do it only after Courts' intervention. It is true creation of post does involved financial implication. Hence financial health of a particular institution plays important role to which Courts also keep in mind. The Court does exercise its restrain where facts are such where extent of creation of post creates financial disability. But at this juncture we would like to express our note of caution, that this does not give largess to an institution to engage larger number of daily wage workers for long number of years without absorbing them or creating posts which constitutes an unfair labour practice. If finances are short engagement of such daily wage workers could only be for a short limited period and if continuous work is required it could only do so by creating permanent post. If finances are not available, take such work which is within financial mean. Why take advantage out of it at the cost of workers.

"19. One of the questions which is also up for our consideration is, apart from the fact who are to be regularize, what would be payable to these daily wage workers who have completed more than 10 years of continuous service. Submissions for the respondents is, that such daily wage workers should be paid the same minimum scale of pay as admissible to the regularized incumbent based on the principle of `equal pay for equal work' Daily rated casual labour employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch V. Union of India [AIR 1987 SC 2342 : 1988 Lab IC 37] [Supra] was a case of daily rated casual labourers of the P & T department doing work similar to that of the regular workers of the department. This Court held :

" ..... Even though the Directive Principle contained in Articles 38 and 39 [d] may not be enforceable as such be virtue of Article 37 but it may be relied

upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. The State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. Such denial amounts to exploitation of labour. The Government cannot be take advantage of its dominant position and compel any worker to work even as a casual laborer on starvation wages. It may be that the casual laborer has agreed to work on such low wages ..... "

30. According to the State counter if absorption is made from 1-1-1993 of all those who have completed ten years of service as per Tribunal order, the payment towards arrears would be to the tune of 15 crores. Since in the proposed scheme, absorption is from 1st January, 2001, the State has already gained much more than this arrears of more than 15 crores. In this light and in the absence of details being placed before us, we are leaving the extent of creation of the posts on the State Government. We hope and trust, the Government who is the guardian of the people and is obliged under Article 38 of the Constitution, to secure a social order for the promotions of welfare of the people, to eliminate inequalities in status, will endeavour to give maximum posts even at the first stage of absorption, and DDO the same in the same spirit for creating additional posts after enquiry as we are indicating hereunder. It is necessary that the State Government to set up an enquiry to find what further number of additional posts are required for regularizing such other daily rated workers, and after assessing it, to create such additional posts for their absorption. This exercise should be done by the State Government within a period of six months. The submission on behalf of the respondent is that those who are not

regularized and are continuously working for 10 or more years with minimum of 240 days in each calender year, they should be paid minimum pay scale as admissible to an incumbent regularized on similar post doing similar work instead of minimum wages as prescribed by the Government. The dispute thus is, whether such workers to be paid minimum daily wage as Government prescribes as per the scheme or pay them the minimum pay scale admissible to such regularized worker without increment and other benefit. This Court in one set of decisions have said to regularize them in one block and pay them the same minimum pay scale as admissible to a regular employee as in; Surinder Singh Vs. Engineer-in-Chief, C.P.W.D., 1986 [1] SCC 639 " [AIR 1986 SC 584 : 1986 Lab IC 551], U.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India, [1987] Supp SCC 658 : [AIR 1988 SC 517 : 1988 Lab IC 958], 1998 State of Punjab v. Devinder Singh, 1998 [9] SCC 595, Chief Conservator of Forests v. Jagannath Maruti Kondhare, 1996 [2] SCC 293 : [1996 AIR SCW 735 : AIR 1996 SC 2898 : 1996 Lab IC 967] and in other cases to absorb in a phased manner under a scheme which depends on the facts of each case. In Mool Raj Upadhayaya v. State of H.P. [1994 Supp [2] SCC 316] [Supra], this Court approved a scheme under which the daily wage workers whether skilled or unskilled who have not completed 10 years of service was to be paid daily wage at the rates prescribed by the Government of H.P. from time to time for daily wage employees falling under Class III and IV till they are appointed regularly. Strong reliance is placed on behalf of the University on this case and also, looking to the fact that it has not impressive source of its own, being an Agricultural University, depending on the State fund, we hold they should be paid minimum wages as prescribed by the Government from time to time as proposed under the scheme. We approve both clauses 2 and 3 on the facts

and circumstances of this case. In fact, in seeking minimum pay scale to such daily rated workers as admissible to a regular employee is based on the principle of `equal pay for equal work'. It is pertinent to refer, in this case the observations of the High Court :

".... Workmen are not claiming equal pay for equal work but they are claiming permanent status as Class IV employees as they are working and have gained more than sufficient experience in their work ... "

In case of G.B.Pant University of Agriculture and Technology versus State of UP and others, reported in 2000 AIR SCW 2870, the apex court while considering the question of regularization, has observed as under in para 10 of the said judgment:

"10. Admittedly, Cafeteria employees need succour for livelihood - would they continue to remain half fed and half clad as long as they live - is this is the society that we feel proud of : Is this the guarantee provided by the founding fathers of our Constitution or is this the guarantee provided by the founding fathers of our Constitution or is this the concept of socialism which they conceived ? None of the answers can possibly be in the affirmative. The situation is rather awesome and deplorable - The University by compulsion directs students to be residents of hostel with a definite ban on having food from outside agencies excepting under special circumstances and the provider of food, namely the staff of the Cafeteria ought not to be treated as an employee of the University - whose employees they are if we may ask and we think it would not be impertinent on our part to ask the same - is it the consumer of food ? Since when the consumer of food becomes the employer ? These are the questions which remain unanswered; The society shall have to prosper and this prosperity can only come in the event of there being a wider vision for total social good and benefit; It is not bestowing any favour to anybody but it is a mandatory obligation to see that the society thrives. The deprivation of the weaker section we had for long but time has now come to cry halt and it is for the law courts to

rise up the occasion and grant relief to a seeker of a just cause and just grievance. Economic justice is not a mere legal jargon but in the new millennium it is the obligation for all to confer this economic justice to a seeker. Society is to remain, social justice is the order and economic justice is the rule of the day. Narrow pedantic approach to statutory documents no longer survives. The principle of corporate jurisprudence is now being imbibed on to industrial jurisprudence and there is a long catena of cases in regard thereto - the law thus is not in a state of fluidity since the situation is more or less settled. As regards interpretation widest possible amplitude shall have to be offered in the matter of interpretation of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice - social and economic, as noticed above ought to be made available with utmost expedition so that the socialistic pattern of the society as dreamt by the founding fathers can thrive and have its foundation so that the future generation do not live in the dark and cry for social and economic justice. "

In case of Registrar, University of Hyderabad & Anr. versus M.V. Santa Kumari, reported in 2001-1-CLR page 35, while considering the question of regularization, the apex court has observed as under in para 2 of the said judgment :

"2. It is brought to our notice now by Mr. Nageswara Rao learned Counsel for the respondent that the services of the respondent have been regularized against one of the vacant posts available for Junior Office Assistant cum Clerk in the University pursuant to the orders made by the High Court subject of course to the result of this petition. When a vacant post is available in the university and the respondent has been accommodated in that post, though ostensibly to comply with the order made by the High Court, it could be seen that she had worked for more than five years at the time when she filed a petition in the High Court and now she has been in service for more than a decade, we do not think it would be appropriate to disturb that state of affairs. Although the University had passed the order on 17.4.1996, regularizing her services, subject to

result of this appeal, we make it clear that her appointment having been made against a clear vacancy, she must continue in the said post. "

In case of Chief General Manager, R.B.I. v. General Secretary, Reserve Bank WOrkers Organization, reported in 2001 II CLR 925, the apex court has observed as under in para 2, 3 and 4of the said judgment :

"2. A matter was referred to the industrial tribunal on the following question :

'whether the action of the management of Reserve Bank of India, Bangalore, is justified in not regularizing the under mentioned ticca mazdoor/daily rated employees of Reserve Bank of India, Bangalore ? If not, to what relief the workers are entitled to ?'

3. The Tribunal answered the said question by holding that it will be proper for the appellant bank to prepare a separate reasonable scheme for regularization of the workmen (except for one Gautham) with some certain time bound directions. When this Award was challenged in a writ petition in the High Court, the matter was considered by the Division Bench of the High Court holding that substantial justice would be done to both the parties by directing the bank to regularize the services of the workmen who have been working from 1982, 1983, 1984 and 1986 with effect from 1990 insofar as 4 ticca mazdoors who are working from 1988 to be regularized with effect from 1983 with all the consequential monetary benefits including the arrears of salary and so on. This order is in challenge before us in this appeal by special leave.

4. This Court in somewhat identical matter, though not arising out of a reference made to the Industrial Tribunal considered the very question referred to the Tribunal with reference to certain mazdoors who had been appointed on daily wages since 1984. After examining various aspects of the matter including the effect of the settlement dated July 23, 1993, held that it would not be appropriate to adopt different standards in different sectors in the country and the workmen of the appellant will have to be treated as having been regularized with effect

from May, 31, 1994 from which date they have been regularized as per the Settlement dated July 23, 1993 and disposed of the case accordingly."

I have considered the aforesaid decisions of this Court as well as of the apex court wherein the question of regularization of the employees who were working for years together was considered.

Now, I am considering the decisions relied on by Mr. Vaishnav on behalf of the respondents. In case of Dr. Arundhati Ajit Pargaonkar versus State of Maharashtra and Another reported in JT 1994 (5) SC 378 relied upon by Mr. Vaishnav, the question for consideration of the apex court was whether the appellant appointed temporarily against a permanent post was entitled to be regularized under temporary Govt. Servants Extension of Permanency Resolution of 1975 or not and when she has worked for nine years without break on the date of advertisement. The answer given by the apex court was in the negative. It was held that the claim of the appellant that she stood regularized under 1975 Resolution cannot be accepted. It was further held that the eligibility and continuous working for howsoever long periods should not be permitted to over reach the law. I have considered this judgment cited by Mr. Vaishnav. The facts and circumstances of the said case are not identical to this case and, therefore, in the facts and circumstances of the present case, principles laid down in the said decision are not applicable.

In case of State of Punjab and others versus Surinder Kumar and others reported in (1992) 1 SCC 489, relied upon by Mr. Vaishnav, the question of regularization of part timer was under consideration before the apex court. In the case before the apex court, the respondents offered posts of part time lecturers with specific condition that they could be relieved at any time without notice and that payment would be made on hourly basis. The offer was accepted by the respondents not under any mistake and appointments were made accordingly and, therefore, it was held that the respondents were not entitled to be regularized in their posts as lecturers with salary on regular pay scale. In the instant case, the facts are not similar. In the instant case, there is no order of appointment given by the respondents, no condition has been prescribed or incorporated in any circular or order. IN this case, the petitioners were appointed on the basis of

their application after verification of the application as regards their names, address, age, qualification etc. and the respondent corporation has continued the petitioners for years together in the same position. Some of the petitioners herein were appointed in 1980 and some were appointed in or around 1982-83 and lastly in November, 1990, the respondent corporation had followed procedure for regularization of such contingent paid employees on regular post and on regular establishment wherein about 36 of such employees were regularized on regular post but thereafter, have not undertaken any such process for regularization of such contingency paid employees. Therefore, in the facts and circumstances of the present case, the principles laid down by the apex court in case of State of Punjab and others versus Surinder Kumar and Others reported in (1992) 1 SCC 489 are not applicable.

The third decision relied upon by Mr. Vaishnav is 1998 (3) GLR 2264 in case of DD Upadhyaya versus State of Gujarat and Others. This Court was considering the question of regularization in light of the Gujarat Civil Services (Classification and Recruitment) Rules, 1967, Rule 16(ii) (iii) in particulars. Appointments to the posts of Assistant in Legal Department were made by calling names from the employment exchange and such appointments were made on ad.hoc basis. Though the appointments were required to be made through GPSC. Thereafter, appointments were regularized under Rule 16 by relaxation of Rules under the guise of interest of public service. On facts, it was found that at the relevant time, GPSC had recommended names for posts of Assistants which included Law Graduates. Out of six persons appointed four had failed in GPSC Examination and two chose not to appear. Father of one of these persons working as Deputy Secretary in the Legal Department at the relevant time and favouritism not rules out. It was held that the appointments were void ab initio. These are not the facts in the case before hand. In the instant case, specific question was asked to the learned advocate Mr. Vaishnav as to what was the procedure for recruitment of part time contingent employees. He has not been able to answer that particular question whether any procedure has been prescribed by the corporation or not for appointment of part time contingency paid employees. When there is no procedure prescribed by the Corporation, such appointments cannot be termed as back door entries. Appointments were made on the basis of the applications given by the petitioners after verifying and scrutinizing the particulars as regards name, address,

age and qualification and, therefore, in the peculiar facts and circumstances of the case, the observations made by this Court in case of D.D. Upadhyaya and others (supra) are not applicable to the present case.

The fourth decision relied upon by Mr. Vaishnav, in case of Dinesh Shivubha Parmar v. State of Gujarat & Others is reported in 1992 (1) GLR page 608 wherein this Court has considered that the recruitment to Government Service is required to be made on the basis of recommendations from the employment exchange and social welfare department. It has been held that if irregularly appointed persons are confirmed, the purpose and object of the Employment Exchange Act would be frustrated. Here, in the facts and circumstances of the present case, according to my opinion, for recruitment of part time contingency paid employees, there is no procedure prescribed to call the names from the Employment Exchange Officer or from the Social Welfare Office and, therefore, appointments of the petitioners in the present case cannot be considered as irregular appointments because there was no rule prescribed for such appointment and, therefore, in the facts and circumstances of the present case, decision in case of Dinesh Shivubha Parmar (supra) is not applicable. In the instant case, some of such part timers were regularized in November, 1990 wherein as admitted by Mr. Vaishnav, persons junior to the petitioners herein were considered for regularization and their services were regularized but after November, 1990, no such task has been undertaken by the respondent corporation. Therefore, in view of these peculiar facts and circumstances of this case, aforesaid decision shall not apply.

I have considered the decisions cited from both the sides. After considering the decisions and the observations made therein by this Court and the apex court, according to my opinion, when the petitioners were permitted to join the duty by the respondent corporation and permitted them to continue for years together continuously, uninterruptedly and when there is no any complaint as regards their work, their case deserves positive consideration for regularization. All these are class IV posts of sweeper and they are engaged to work on part time basis to work four hours in a day. Looking to the nature of work performed by the petitioners, looking to the period of service put in by the petitioners as part time contingent paid employees since the date of their appointment and considering the fact that there is no complaint against their work and since no procedure has been prescribed for making recruitment of such Class

IV part time contingency paid employees, according to my opinion, directions are required to be issued to the respondents. Though no procedure has been prescribed for appointment of such part timers in the respondent corporation, procedure has been prescribed in the respondent corporation to make them permanent after selection. Unfortunately, there is nothing on record to show that after November, 1990, any selection process has been initiated by the respondent corporation or not. One more aspect is that it is not the case of the respondent Corporation that there is no vacancy in Class IV post of peon/sweeper. No such averment has been made in the affidavit in reply filed by the respondent Corporation. No such contention has been raised by the respondent corporation during the course of hearing. Therefore, it is presumed that the vacancies are available in the Corporation because of the fact that since last more than ten years, services of such part time employees have not been regularized by the Corporation. Therefore, it is clear that the vacancies are available with the Corporation. There is yet another aspect which is also required to be considered that the respondent corporation has produced list at page 42 alongwith its affidavit in reply. As per the said list at page 42, in all 36 candidates from amongst the similarly situated persons have been selected for regular employment on permanent basis out of which, some of such persons are junior to the petitioners as admitted by Mr. Vaishnav as selected in the selection process. Therefore, according to my opinion, it would be just and proper if it is directed to the respondents to make them permanent or regularize their services, those who have worked as part time employees for more than ten years from the date of joining service should be regularized.

Therefore, it is directed to the respondent corporation to regularize the services of the part time contingent paid employees who have completed ten years service from the date of joining.

I have considered the submissions made by the learned advocates for both the parties in respect of the regular wages and difference thereof arising pursuant to these directions. One petition has been filed in the year 1991 and the another has been filed in the year 1987. Pursuant to the directions to regularize the services of those who have completed ten years' service as such, naturally the petitioners would become entitled for arrears of their wages arising out of such regularization from the date of their completing ten years of service. The respondent corporation is a public

body. It would not be just and proper to burden it for the whole period. Therefore, according to my opinion, the respondents are required to regularize the services of such part timers with effect from the date of their completing ten years' services as such on notional basis for a period upto 31.12.1995 and are required to be directed to pay all the arrears arising out of such regularization in respect of wages with all other benefits etc. with effect from 1st January, 1996.

Therefore, it is directed to the respondent corporation to regularize the services of the part time contingency paid employees who have completed ten years of service in the regular scale of Class IV category and to fix their salary accordingly on notional basis for a period upto 31.12.1995 with effect from the date of their completing ten years' service as such within three months from the date of receipt of copy of this order. The respondent corporation is further directed to pay actual difference of salary arising out of such regularization by considering the wages which were paid as part time contingency paid employees and payable as a regular class IV employees in view of regularization with effect from 1st January, 1996. It is clarified that the services of such part time contingency paid employees shall be considered continuous service from the date of their joining the job as such for the purpose of retirement benefits. If any part time contingency employees working on the establishment has not completed ten years of service, then, in such case, he shall be given such benefit of regularization in terms of these directions on and from the date of his completion of such ten years' service which has been considered to be qualifying service for the purpose of regularization. Thus, such part timers shall be regularized by the corporation from the date of their completing ten years of such service and arrears of such wages shall be paid to such employees with effect from 1.1.1996 and for the period prior thereto, their wages shall be fixed on notional basis.

Both the petitions are allowed accordingly. Rule is made absolute in terms indicated hereinabove with no order as to costs.

27.3.2002. (H.K. Rathod,J.)

Vyas